

REMARKS

By this Amendment, applicants have amended claim 1:

- (1) to highlight that the microemulsion compositions are skin cleansing compositions (i.e., dissolving at least 20% triolein) as opposed to mere carrier compositions for water soluble, inorganic, astringent anti-perspiration agents (as in U.S. Patent No. 5,980,874 to Foerster et al.); and
- (2) to highlight that, notwithstanding the superior cleansing performance (see point (1) above), the compositions are mild to the skin; in this regard, claim 1 is amended to recite that epidermal proteins and lipid organizations of stratum corneum washed with said microemulsion is not damaged as measured by transepidermal water loss tests (supported at Example 12, pages 38 and 39).

Finally, claim 4 has been amended to overcome a rejection under 35 USC §112, second paragraph.

As noted, it is believed the amended claims overcome the rejection under 35 USC §112 and it is respectfully requested this rejection be withdrawn in this regard.

At page 2 of the Office Action, the Examiner has rejected claims 1-3 and 6-8 under 35 USC §102(b) and, at page 4 the Examiner has rejected claim 1-8 both over U.S. Patent No. 5,980,874 to Foerster et al. Specifically, the Examiner states that Foerster discloses microemulsions which may contain oils (e.g., octyl dodecanol), surfactant, co-surfactant and water in same amounts as used in compositions of the invention and therefore are anticipatory. Teachings of other claims are said to be rendered obvious by the other teachings in the Foerster patent. These rejections under 35 USC §102 and/or USC §103 are respectfully traversed for reasons set forth below.

At its heart, the subject patent application is a classic selection patent. It is not merely about the formation of a microemulsion (which incidentally can be quite difficult) but about the formation and use of specific microemulsion which:

- (1) can cleanse;
- (2) can cleanse without stripping essential barrier lipids which leave the skin dry (see page 1, lines 19-23);
- (3) can be rinsed without excessive stripping (drying) or excessive clinging (oily stickiness) (page 1, line 26 to page 2, line 5); and
- (4) which is sufficiently robust as to not collapse the emulsion (page 2, lines 7-15).

In order to achieve these multiple benefits, it is not sufficient to pick and choose any oil, any surfactant and any co-surfactant, but rather it is necessary to select specifically:

- (a) oils which dissolve at least 20% triolein (not all oils do);
- (b) oils which have defined spreadability criteria (not all oils do); and
- (c) compositions which meet required mildness criteria (as per amended claims and potential damage to proteins and lipids).

The Foerster patent is a patent fundamentally concerned with use of microemulsion as a carrier for certain anti-perspiration agents and, to the extent it is unconcerned with skin cleansing, skin feel compositions, it displays absolutely no sense of criticality as to which oils may or may not be used to form the microemulsion compositions of that patent.

As indicated, not all oils are the same. Thus, for example, an example of an oil which cannot dissolve even 10% triolein (as required for skin cleansing compositions of the invention) is silicone oil (page 10, lines 1-2); and an example of an oil well outside the spreading range of the claims (and required to provide correct skin feel) is castor oil (see Table 1, page 11).

Yet, Foerster makes no distinction whatsoever between one oil or another. Indeed at column 2, lines 64-65, it is noted that ANY water insoluble, dermatologically compatible oil can be used.

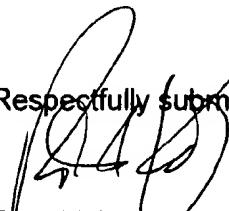
In short, Foerster is unconcerned with skin cleansing and skin feel compositions. As such it provides no teaching or suggestion that, where used as skin cleansing, skin feel compositions, specifically recited oils are required to achieve the specific and unexpected results of the invention.

The Examiner has simply picked and chosen elements from the reference which, if chosen, fortuitously could read on the claims of the invention. Such random picking and choosing, however, is prohibited by the patent laws since it indicates that the claimed selection invention would be obvious only in hindsight.

In view of the amendments and discussion above, it is respectfully requested that the Examiner reconsider and withdraw all rejections of the claims and that the claims, as amended be allowed.

If a telephone conversation would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided.

Respectfully submitted,


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